IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1113 OF 1991
IN
LAND ACQUISITION REFERENCE NO.23 OF 1987

The State of Maharashtra
(At the instance of Special
Land Acquisition Officer No.12,
Satara) ...Appellant

Versus

Shri Madhukar Jagannath Kulkarni & Anr. ...Respondents

Shri B.H.Mehta, A.G.P for the Appellant.

Shri N.V.Walawalkar, Sr Advocate with Shri Devidas H. Keluskar for the Respondent.

WITH
FIRST APPEAL NO.242 OF 1992

Shri Madhukar Jagannath Kulkarni & Anr. ...Appellant

Versus

The State of Maharashtra ...Respondent

Shri N.V.Walawalkar, Sr Advocate with Shri Devidas H. Keluskar for the Appellant.

Mrs G.P.Mulekar, A.G.P for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : 06th December, 2007.

JUDGMENT:

1. The submissions of the learned counsel appearing for the parties were heard yesterday and today the appeals have been kept for the dictation of judgment. Both the appeals arise out of the same judgment and award dated 21st November, 1990 in Land Acquisition

Reference No.23 of 1987. The said reference was under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The First Appeal No.1113 of 1991 has been preferred by the State of Maharashtra for challenging the impugned judgment and award. The First Appeal No.242 of 1992 has been preferred by the claimants seeking further enhancement in market value.

2. The acquisition relates to land bearing Gat No.660 admeasuring 40.60 Ares at village Nagthane, Taluka Satara, District Satara. The notification under section 4 of the said Act was issued on 16th June, 1986 by which the said land was notified for acquisition for the public purpose of construction of State Transport Bus Stand at village Nagthane. In response to notice under section 9 of the said Act, the claimants made a claim for compensation at the rate of Rs.5,000/- per guntha. An award under section 11 of the said Act was made on 03rd March, 1987. The Special Land Acquisition Officer offered market value at the rate of Rs.60,000/- per hectare. The claimants did not accept the award and filed an application for reference under section 18 of the said Act. By the impugned judgment and award, the Reference Court came to the conclusion that the market value of the acquired land on the relevant date was Rs.2,000/- per guntha. The reference Court also awarded

statutory benefits to the claimants.

3. The learned A.G.P in support of appeal preferred by the State of Maharashtra submitted that none of the six sale instances on which reliance was placed by the claimants were relevant for different reasons. The first sale instance was of a transaction of mortgage and not a transaction of a sale. The other two sale instances at Exhibits 31 and 33 were of the year 1979 and 1981 and whereas, the relevant date for determination of compensation in the present case is 16th June, 1986. Moreover, the said two sale instances were in respect of a very small plots of land. He submitted that though sale instances at Exhibits 35, 37 and 38 were of May 1986, the same were in respect of very small plots of land as compared to the area of the acquired land. He submitted that the transactions covered by the said sale instances were not bonafide and genuine transactions. He pointed out that the transactions were made in anticipation of acquisition of various lands in the village. He pointed out that the village Gram Panchayat had allegedly passed a resolution that the State Government should offer price of Rs.2,000/- per guntha in respect of acquired lands. He submitted that even after discarding all the six sale instances, the learned trial Judge has referred to certain suggestions given by the learned A.G.P during

cross-examination of witness No.4 for the claimants and has arbitrarily arrived at the market value of Rs.2,000/- per guntha. He submitted that there is no legal and factual basis for fixing the market value at the rate of Rs.2,000/- per guntha. He submitted that the reference ought to have been rejected on the ground that the claimants had not discharged the burden to prove that market value offered by the award under section 11 was identical.

4. The learned senior counsel appearing for the claimants in support of the appeal preferred by the claimants submitted that the sale instances at Exhibit 35, 37 and 38 were of 15th May, 1986 in respect of lands which were comparable in all respect with the acquired land. He submitted that it cannot be said that the said sale instances were in respect of plots which are very small as compared to the acquired land. He submitted that even assuming that the sale instances related to plots having smaller area, the said sale instances can be the basis for determination of market value of the acquired land by making appropriate adjustments. He submitted that though the sale instances at Exhibit 31 and 33 were of the year 1979 and 1989 respectively and though the same were in respect of smaller plots of land, the said sale instances are relevant to show the trend of market value prevailing in the village. He

submitted that area of the acquired land was about 40 gunthas and therefore, it cannot be said that any expenditure is required to be incurred for developing area of 40 gunthas. He submitted that the sale instances at Exhibit 35, 37 and 38 could not have been discarded by the reference Court and the market value at the rate of Rs.5,000/- per guntha ought to have been awarded.

5. I have given a careful consideration to the submissions made by the learned counsel appearing for the parties. I have also perused the impugned judgment and award as well as notes of evidence.

6. The claimants have examined seven witnesses in support of their claim. The 1st witness is the 1st claimant Madhukar. The 2nd witness is one Shivaji Anantrao Sutar who has been examined to prove the sale instance at Exhibit 33 dated 14th December, 1981. The said witness is the vendor under the said sale instance. The 3rd witness examined by the claimants is one Hari Daulata Salunkhe. He has been examined to prove the sale instances at Exhibit 51 and 52. The 4th witness examined examined by the claimants is one Jaisingh Salunkhe who is the vendor under the sale instances at Exhibit 35, 37 and 38. The witness No.5 examined by the claimants is one Vishnu Salunkhe who is the purchaser

under the sale instance at Exhibit 35. The witness No.6 is one Balkrishna Yadav who is the vendor under sale instance at Exhibit 31. The last witness examined by the claimants is Manaji Namaji Patel. He has been examined to prove sale transaction of the date 21st August, 1989 (Exhibit 59).

7. In so far as the location of the acquired land is concerned, a reference will have to be made to the evidence of the first claimant Madhukar. He has stated that village Nagthane is situated at a distance of about 15 kilometres to the south of Satara city. He has stated that Pune-Banglore highway is close to his village and it is on the eastern side of the village. In so far as the location of the acquired land is concerned, he has stated that there is a small strip of land in between the Bombay-Banglore highway and the land under acquisition. He has stated that the land under acquisition has a plain level and the same was more suitable for construction purpose as the land consists of "murum". He has deposed that in that village there were three to four wholesale shops of grocery and there was a wholesale market of ginger. He stated that there were three to four oil mills and saw mills in the village and there was a chemical factory. He has deposed that there are four private hospitals and one government hospital in the village. There is a

highschool and junior college in the village. He deposed that there is a housing society known as Kirti Housing Society near the said land and there were hardware shops and automobile garages near the said land. He has produced in evidence a plan prepared by a retired surveyor. He has stated that the plan is signed by the retired surveyor Mr.Jadhav and it was signed by Mr.Jadhav in his presence. The plan has been produced to show the location of the acquired land. However, it must be stated that as the surveyor has not been examined, the contents of the said plan have not been proved. He was cross-examination by the learned A.G.P. In the cross-examination he admitted that the acquired land was a jirayat land. However, he denied that the said land did not yield any crop. He admitted that the land was lying uncultivated. He stated that the land between the highway and acquired land was uncultivated land. As far as other aspects regarding the location of the land are concerned, there is no cross-examination. The statements that there is a housing colony near the acquired land and there were hardware shops and automobile garages near the acquired land have gone unchallenged. The statement that the land is more suitable for construction purposes in view of existence of "murum" is also not seriously challenged in the cross-examination.

8. It will be necessary to refer to the sale instances filed on record. The claimants have produced at Exhibit 51 a document dated 28th November, 1979 executed by witness No.4 Jaisingh in favour of Hari Salunkhe. The witness No.4 described the said transaction in respect of land bearing Gat No.1233 admeasuring 10 gunthas as a transaction of reconveyance. He himself stated that the amount of price of Rs.6,000/- was not the real price of the land and the said amount was obtained by him from Hari Salunkhe. Exhibit 52 is document dated 15th May, 1986 which is a reconveyance executed by Hari Salunkhe in favour of the said witness Jaisingh. The consideration mentioned in document dated 15th May, 1986 is Rs.6.000/- which is obviously not the genuine market value of the land considering the nature of the transaction. Therefore, the learned trial Judge was right in rejecting the said sale instances.

9. At Exhibit 31 a certified copy of sale deed dated 02nd October, 1979 executed by Balkrishna (witness No.6) in favour of Murlidhar Vibhute has been produced. The sale is in respect of area of 1500 sq feet. The said transaction has been effected nearly seven years prior to the date of section 4 notification. The combination of two factors namely that it is a transaction of 1979 and that it is in respect of a small plot of land is sufficient to discard the said sale

instance as an instance of a comparable land.

10. Exhibit 33 is the sale deed dated 14th December, 1981 executed by the witness Shivaji Sutar in favour of Vishwas Salunkhe. The same relates to area of one and half gunthas. The said Shivaji Sutar is witness No.2. For the same reasons which are indicated above in respect of document at Exhibit 31, the learned trial Judge was justified in coming to the conclusion that the said sale instance cannot be in respect of a comparable land.

11. Now coming to the three other sale instances at Exhibit 35, 37 and 38, the said sale instances are in the form of certified extracts of the index II and the said certified copies are admissible in evidence by virtue of section 51A of the said Act. Jaisingh (witness No.4) was examined to prove the said transactions. All the three transactions are of date 15th May, 1986 relating to different parts of the land bearing Gat No.670. He has stated that land bearing Gat No.670 is situated in the same village at a distance of about 1500 feet from Pune-Banglore highway and the acquired land subject matter of the appeals is also at a distance of 1500 feet from the land as a crow flies. He has stated that the land bearing Gat No.670 is a fallow land and was not under cultivation. He has stated that

the said land has not been converted for non-agricultural use. The 1st transaction relates to area of two gunthas. The 2nd one relates to area of two gunthas and 3rd one relates to area of one guntha. The lands have been sold at the rate of Rs.5,000/- per guntha. In the cross-examination he denied the suggestion that the said three portions of land bearing Gat No.670 were under cultivation. In the cross-examination he stated that the said portions are situated at distance of about 50 feet from Nagthane Saspade road. He stated that there are no shops as such in Gat No.670. He stated that purchasers of the said portions have constructed houses on the said plots. He denied the correctness of the suggestion that as on 15th May, 1986 the rate of the land under cultivation was not more than Rs.5,000/- per guntha. He stated that the rate of lands under cultivation was less than Rs.5,000/- per guntha.

12. Various reasons have been assigned by the learned trial Judge for rejecting the said three transactions. One of the reasons given is that the existence of a possibility of the sale transactions being brought into existence with the intention that the same will be taken for granted the purposes of fixing the compensation of the lands in village cannot be ruled out. Secondly, the learned Judge has stated that land

bearing Gat No.670 was just adjoining the road which is known as Nagthane-Saspade road. The further reason given by the learned Judge is that the said three transactions are relating to small plots of land ranging from two gunthas to three gunthas.

13. It must be noted here that vendor under the said three transactions was examined as a witness. Perusal of his cross-examination shows that no suggestion was given to the said witness to the effect that sale of the three portions of Gat No.670 was brought about with the object of ensuring that higher compensation is offered by the State Government to the lands which are proposed to be acquired from the said village.

14. One of the purchasers in one of the three transactions (Exhibit 35) Vishnu Ganpati Salunkhe was examined as a witness. He admitted that he was a member of the Gram Panchayat and that a resolution passed by the Gram Panchayat at Exhibit 42 resolving that a particular market value should be fixed by the State Government for acquired lands. In the said resolution the rate recommended was Rs.5,000/- per guntha. Even to the said witness the aforesaid suggestion has not been specifically given. Therefore, it was not open for the State of Maharashtra to contend at the time of oral arguments that the sale instances at Exhibit 35, 37 and

38 were not in respect of genuine transactions and the said transactions were brought about for ensuring that lands proposed to be acquired in the village get higher market value. On the contrary it has come on record in deposition of the vendor Jaisingh that the purchasers of the said portions have constructed houses on the said three portions. This is one factor which shows that the transactions were genuine transactions. As far as nature of the land bearing Gat No.670 is concerned, it was a fallow land. As stated above, even the acquired land was a fallow land on the relevant date. The acquired land is close to Pune-Banglore National Highway as it has come on record that only a strip of land having area of 12 gunthas is between the acquired land and the highway. Whereas the distance between land bearing Gat No.670 from the said National Highway is 1500 feet. However, this drawback is balanced by the fact that it is at the distance of 50 feet from Nagthane-Saspade road. The said three sale instances are of 15th May, 1986 and the relevant date in present case is 16th June, 1986. Therefore, considering all the relevant factors relating to the acquired land as well as land bearing Gat No.670 it can be safely said that land bearing Gat No.670 was comparable to the acquired land on the relevant date.

15. It will be necessary to refer to decision of the

Apex Court in the case of Ravinder Naraian & Anr Vs. Union of India [(2003) 4 Supreme Court Cases Page 481]. In the said decision the Apex Court held that there was no absolute prohibition in taking a note of the rates fixed for sale of smaller plots and making it the basis for fixing the compensation for larger estates. This proposition of law has been quoted with approval in the recent case of Gafar and others Vs. Moradabad Development Authority and another [(2007) 7 Supreme Court Cases Page 614]. Therefore, in a given case the sale instances of smaller plots can be relied upon to determine the market value of the acquired land. That does not mean that market value of the acquired land has to be fixed as per the market value of the sale instance. Appropriate deductions are required to be made considering larger area of the acquired land. The reason is that normally the rate at which larger plot is sold is less than the rate at which smaller plot is sold as normally in case of larger plots, expenses are required to be incurred on development. In case of larger plots, provision is required to be made for internal roads and other amenities. Out of the said three sale instances, Exhibit 35 is of an area of three gunthas. The acquired land is approximately 40.60 Ares (40 gunthas) which is approximately 4000 sq meters. Both the lands have potential for non agricultural use being fallow and levelled lands and being near the close

vicinity of a prominent national highway. Considering the area of the acquired land, some expenditure will have to be incurred on maintaining open spaces providing for internal roads etc. There are decisions of the Apex Court laying down the percentage of deduction. The deduction suggested by the Apex Court in various decisions ranges from 20% to 40%. Considering the aforesaid features of the present case, the market value of the acquired land can be determined on the basis of the market value of the sale instances at the rate of Rs.5,000/- per guntha. The question is what should be the appropriate deduction. Considering the aforesaid factors, the market value of the acquired land will have to be fixed at Rs.3,000/- per guntha by making deduction of 40% of Rs.5,000/- per guntha. That will be just and fair market value of the acquired land.

16. Before parting with the judgment, it must be noted that the reasoning given by the learned trial Judge for fixing the price at the rate of Rs.2,000/- per guntha is completely erroneous. He has placed reliance on certain suggestions given to the witnesses examined by the claimants during their cross-examination by the learned A.G.P.

17. In this case there is no dispute regarding grant of statutory benefits under section 23(1-A), 23(2) and

section 28 of the said Act.

18. Hence, I pass the following order:

(i) First Appeal No.1113 of 1991 is dismissed. The Appellant-State of Maharashtra will pay costs of the appeal to the respondents-claimants.

(ii) First Appeal No.242 of 1992 is partly allowed. The judgment and award passed by the trial Court is modified by holding that the claimants/appellants will be entitled to market value at the rate of Rs.3,000/- per guntha. In addition to the market value, the claimants/appellants will be entitled to statutory benefits under section 23(1-A), 23(A) and 28 of the Land Acquisition Act, 1894. The claimants will be entitled to proportionate costs of reference and of the appeal.

(iii) The reference Court will calculate the amount payable to the claimants within a period of four months from the date of receipt of the writ of this Court. The excess amount, if any, payable to the claimants shall be paid by the State of Maharashtra within a period of four months from the date on which order is passed by the trial

Court quantifying the amount.

(iv) Writ to be sent down immediately.

JUDGE